

Electronic Acknowledgement Receipt

EFS ID:	2523735
Application Number:	09307988
International Application Number:	
Confirmation Number:	5573
Title of Invention:	SHORT PULSE MID-INFRARED PARAMETRIC GENERATOR FOR SURGERY
First Named Inventor/Applicant Name:	WILLIAM B. TELFAIR
Customer Number:	31518
Filer:	Richard A. Neifeld
Filer Authorized By:	
Attorney Docket Number:	VISX0011U/US
Receipt Date:	29-NOV-2007
Filing Date:	10-MAY-1999
Time Stamp:	12:48:25
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1		ResponseToNoticeOfDefectiveAppealBrief_VISX0011U-US_11-29-2007.pdf	38431 256bb0387cedb1d3a5b5597469c5c3f5445b4c0b	yes	4

Multipart Description/PDF files in .zip description			
Document Description		Start	End
Miscellaneous Incoming Letter		1	1
Petition for review by the Technology Center SPRE.		2	4

Warnings:

Information:

Total Files Size (in bytes):	38431
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Neifeld Docket No: VISX0011U/US

Application/Patent No: 09/307,988

USPTO CONFIRMATION NO: 5573

File/Issue Date: 5/10/1999

Inventor/title: Telfair/Short Pulse Mid-Infrared Parametric Generator for Surgery

Examiner/ArtUnit: Shay/3739

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NUMBER 50-2106.**

2. **FEES PAID HEREWITH BY EFS CREDIT CARD SUBMISSION: \$0**

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HEREWITH:**

RESPONSE TO NOTICE OF DEFECTIVE APPEAL BRIEF

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES: CLIENT BILLING MATTER: BANK ACCOUNT/Check: 6/ G/L ACCOUNT: 5010	FIRM CHARGES: DESCRIPTION: FIRM CHARGE FOR LAWYER:
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INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATA: BTM

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

DATE: 11/29/2007

SIGNATURE: /RichardNeifeld#35,299/

Printed: November 29, 2007 (12:41pm)

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VISX0011U-US_11-29-2007.wpd

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RESPONSE TO NOTICE OF DEFECTIVE APPEAL BRIEF

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

Sir:

In response to the Notice of Defective Appeal Brief Dated 11/29/2007, please consider the following remarks.

The applicant traverses the requirements in the "Notice of Defective Appeal Brief (41.37)" dated 11/29/2007.

On 11/6/2003, the applicant filed an appeal, including an appeal brief.

The applicant received no communication from the USPTO on this as of 3/16/2007.

On 3/16/2007, the applicant filed a request for status.

On 8/10/2007, the USPTO dated an office communication containing a "Notice of Non-Compliance with 37 CFR 1.192(c)" requiring a substitute appeal brief.

On 9/4/2007, the applicant filed the substitute appeal brief required under 37 CFR 1.192(c) by the 8/10/2007 Notice.

On 11/29/2007, the USPTO dated the subject "Notice of Non-Compliant Appeal Brief (41.37)"

The applicant traverses the requirements in the "Notice of Defective Appeal Brief (41.37)" dated 11/29/2007 because 41.37 is not applicable to this appeal. This appeal was filed under old rule 1.192, not new rule 41.37. In fact, the examiner's mailing of the prior notice of non compliance with 37 CFR 1.192 admits that 1.192 is the applicable rule. In addition, the requirements of 1.192 and 41.37 are inconsistent so that the applicant cannot comply with both at the same time.

Moreover, the subject notice to the BPAI guidance in question and answer 6, posted at: <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/bpai91304.pdf>.

That Q and A states that:

Question 6.

If an appeal brief filed before the effective date of September 13, 2004 fails to comply with the content and format requirements of § 1.192 and the Office mails appellant a Notice that correction is required, would an amended appeal brief filed on or after the effective date be required to be in compliance with § 41.37(c)?

No, an amended appeal brief, based on an appeal brief originally filed prior to September 13, 2004, would be acceptable if it complies with either former

§ 1.192 or § 41.37(c), regardless
of when the Office mailed a Notice requiring correction of the noncompliant
appeal brief.

Therefore, the "Notice of Non-Compliant Appeal Brief (41.37)" is improper and the
requirements in that Notice should be withdrawn.

11/29/2007 /RichardNeifeld#35,299/

Date Richard A. Neifeld, Ph.D.
Registration No. 35,299
Attorney of Record

RAN

Date/Time: November 29, 2007 (12:41pm)

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